

# SOUTHERN ENVIRONMENTAL LAW CENTER

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BIRMINGHAM, AL 35233-2838

Facsimile 205-745-3064

January 26, 2012

Attn: Freedom of Information Specialist  
United States Environmental Protection Agency  
Region 4  
Atlanta Federal Center  
61 Forsyth Street  
Atlanta, GA 30303-8960

Control Number	4-FOI-00252-12
Response Due Date: <i>2/29/12</i>	
Fee Category:	<i>Other</i>
Assigned to:	POC: <i>GU</i> SESO OEA <i>CC</i> Other <i>PB</i>
Special Instructions:	<i>Fee waived</i>

Re: Freedom of Information Act Request – Terrapin Creek Dam

Dear EPA FOIA Specialist:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, the Southern Environmental Law Center ("SELC") requests all documents in the possession or control of the Environmental Protection Agency ("EPA") that relate to the Terrapin Creek Dam (U.S. Army Corps number SAM-2011-01311-CHE) on Terrapin Creek, Centre, AL near 34.063540 latitude, -85.613049 longitude.

These documents are to include, but are not limited to:

- 1) Any documents regarding the applicant's application or lack of application for SAM-2011-01311-CHE, or the Terrapin Creek Dam;
- 2) Any written or electronic correspondence concerning the Terrapin Creek Dam;
- 3) Any comments or letters that were received by the EPA regarding the Terrapin Creek Dam (including any letters from other state and national agencies such as the U.S. Army Corps of Engineers ("Corps") and U.S. Fish and Wildlife Service ("FWS"));
- 4) Any written or electronic minutes from meetings concerning the Terrapin Creek Dam;
- 5) Any notes taken while onsite or while communicating with property owners in the area about the Terrapin Creek Dam;
- 6) Any maps, photographs or sketches of the area concerning the Terrapin Creek Dam.

For the purposes of this request, the term "documents" includes all written, printed, recorded or electronic materials, communications, correspondence, memoranda, notations, copies, diagrams, charts, maps, photographs, tables, spreadsheets, formulas, directives, observations, impressions, contracts, letters, messages and mail in the possession or control of the EPA.

SELC is requesting photocopies without charge, or at a reduced charge, because reduction or waiver of fees would be in the public interest. A disclosure is in the public interest if (1) it is likely to contribute significantly to public understanding of the operations or activities

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of the government, and (2) it is not primarily in the commercial interest of the requester. The public interest standard of the fee waiver provision of the FOIA should be "liberally construed" in favor of waivers. McClellan Ecological Seepage Situation v. Carlucci, 835 F.2d 1282, 1284 (9th Cir. 1987); Pederson v. Resolution Trust Corp., 847 F. Supp. 851, 855 (D.Colo. 1994); Etlinger v. FBI, 596 F. Supp. 867, 872 (D. Mass. 1984). The goal of the statute is to avoid the "roadblocks and technicalities which have been used by various Federal agencies to deny waivers...." Pederson, 847 F. Supp. at 855. The information received about the Terrapin Creek Dam will contribute significantly to the public understanding of the operations or activities of the EPA, the Corps, and the FWS. The documents will help outfitters and canoeists on the river understand the justification of why the dam was built.

SELC is a 501(c)(3) non-profit organization with 25 years of experience disseminating public information regarding U.S. regulatory and operational issues. See 5 U.S.C. § 552 (a)(4)(A)(iii). We represent other non-profit organizations who are interested in improving our environment. Although we ask that our clients pay court costs and expert fees, we do not charge our clients for our legal services. We receive our funding from individual donors and foundations. SELC maintains a website that includes both general and topic-specific information regarding the matters with which SELC is involved. For example, SELC frequently publishes reports and issues press releases regarding its projects (See e.g., "Clean Air for the Birmingham Area", [http://www.southernenvironment.org/uploads/publications/BAR\\_0909\\_Final.pdf](http://www.southernenvironment.org/uploads/publications/BAR_0909_Final.pdf)). Lawyers at SELC are routinely interviewed by the media to explain their work and its significance. (See, e.g., "Freeze on Offshore Drilling was Verbal Order," NPR, May 25, 2005, <http://www.npr.org/templates/story/story.php?storyId=127114044>.) SELC's website contains documents generated by SELC for the specific purpose of educating the public on particular issues. (See e.g., "Alabama Water Agenda; Guiding the Way to Healthy Waters" <http://www.alabamarivers.org/alabama-water-agenda-1/alabama-water-agenda-2011-for-web>.) SELC also assists the public in locating information relating to a particular topic by collecting and posting relevant information, documents, and links to other websites.


All of the information that SELC will receive from the FOIA request is available for free to any interested member of the public. SELC staff members also educate the public by speaking at conferences and other public meetings about environmental and natural resource issues in the Southeast. A fee waiver clearly will benefit the general public through increased notice and understanding of the operations of the government and of potential or proposed major policy incentives. By granting SELC a fee waiver, SELC will more effectively be able to perform our goal of using the power of the law to protect the environment and health of the Southeast. SELC further certifies that disclosure of the information sought is not in the commercial interest of the requester.

Should SELC's request for reduced or waived fees be denied, SELC is prepared to bear the reasonable duplication and search costs necessary to fulfill this request. However, I request

you contact me before processing this request if the fee is expected to be in excess of \$250. SELC reserves its right to appeal a fee waiver or reduction denial.

If you have any questions regarding this request, please feel free to call me at 205-745-3060. Thank you for your prompt attention to this matter. We look forward to receiving the public records requested.

Sincerely,



Keith Johnston



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

ATLANTA FEDERAL CENTER

61 FORSYTH STREET

ATLANTA, GEORGIA 30303-8960

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

1200 Pennsylvania Avenue, NW (2822T)

WASHINGTON, DC 20460

February 02, 2012

Mr. Keith Johnston  
Southern Environmental Law Center  
2829 2nd Avenue South, Suite 282  
Birmingham, AL 35233

RE: Request No. 04-FOI-00252-12

Dear Mr. Johnston:

This is in response to your Freedom of Information Act (FOIA) request, 5 U.S.C. 552 seeking records related to selected environmental documents regarding Terrapin Creek Dam, Centre, Alabama and for a waiver of fees in connection with that request.

The FOIA directs agencies to furnish records without any charge or at a reduced charge if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. 5 U.S.C. 552(a)(4)(A)(iii)(1994 & Supp. IV 1998).

Requests for fee waivers must be considered **on a case-by-case basis** and address the requirements for a fee waiver in sufficient detail for the agencies to make an informed decision. In determining whether the statutory requirements are met, agencies must consider six factors in sequence. These factors are summarized below.

1. The subject matter of the requested records must specifically concern identifiable operations or activities of the government. A request for access to records for their informational content alone does not satisfy this factor.
2. For the disclosure to be "likely to contribute" to an understanding of specific government operations or activities, the releasable material must be meaningfully informative in relation to the subject matter of the request.

3. The disclosure must contribute to the understanding of the public at large, as opposed to the understanding of the requester or a narrow segment of interested persons. One's status as a representative of the news media alone is not enough.
4. The disclosure must contribute "significantly" to public understanding of government operations or activities.
5. The extent to which disclosure will serve the requester's commercial interest, if any.
6. The extent to which the identified public interest in the disclosure outweighs the requester's commercial interest.

Should you wish to receive a fee waiver, you must address, in sufficient detail, these six factors. You may send your response by email to [hq.foia@epa.gov](mailto:hq.foia@epa.gov), or by facsimile to this office (202) 566-2147. If we do not hear from you within 7 days from the date of this letter, we will deny your request for a waiver of fees based on insufficient justification. Records will be sent if you have provided assurance of payment should fees exceed \$25.00.

If you have any questions, please contact the Requester Service Center at [hq.foia@epa.gov](mailto:hq.foia@epa.gov), or call 202-566-1667.

Sincerely,

Larry F. Gottesman  
National FOIA Officer

RECEIVED  
FEB 01 2012



**Fee Waiver Determination for FOIA Case #: 04-FOI-00252-12**  
**Melvin Cruver** to: hq.foia  
Cc: r4foia

~~04-FOI-00252-12-04:35 PM~~

This request is being forwarded for fee waiver determination.

M. J. Cruver  
Region 4

Request for Documents for Case # '04-FOI-00252-12'. Due date: February 29, 2012.



FOIA Control Sheet - Case #- 04-FOI-00252-12.doc Request Description.tif